



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/623,258

07/18/2003

Allison Fay Searcy

DC-05200

4683

33438 7590 02/02/2009
HAMILTON & TERRILE, LLP
P.O. BOX 203518
AUSTIN, TX 78720

EXAMINER

JARRETT, SCOTT L

ART UNIT

PAPER NUMBER

3624

NOTIFICATION DATE

DELIVERY MODE

02/02/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

tmunoz@hamiltontertile.com

Office Action Summary

Application No.

10/623,258

Applicant(s)

SEARCY ET AL.

Examiner

SCOTT L. JARRETT

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,20-26,36 and 38-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,20-26,36 and 38-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This **Final** Office Action is in response to Applicant's amendments filed November 25, 2008. Applicant's amended claims 1 and 3-8. Currently claims 1, 3-8, 18, 20-26, 36 and 38-44 are currently pending. Claims 2, 9-17, 19, 17-35 and 37 being previously canceled.

Response to Amendment

2. The 35 U.S.C. 101 rejection of claims 1 and 3-8 is withdrawn in response to Applicant's amendment to claim 1.

Response to Arguments

3. Applicant's arguments filed November 25, 2008 have been fully considered but they are not persuasive. Applicant's argue that the prior art of record fails to teach or suggest each and every element of the claimed invention specifically: scheduling the manufacture of an item to complete during a shipping window nor determining the shipping window so as to allow the item to be shipped via a lower cost method while arriving at a destination as if shipped via an expedited shipping method (Paragraphs 2-3, Page 8).

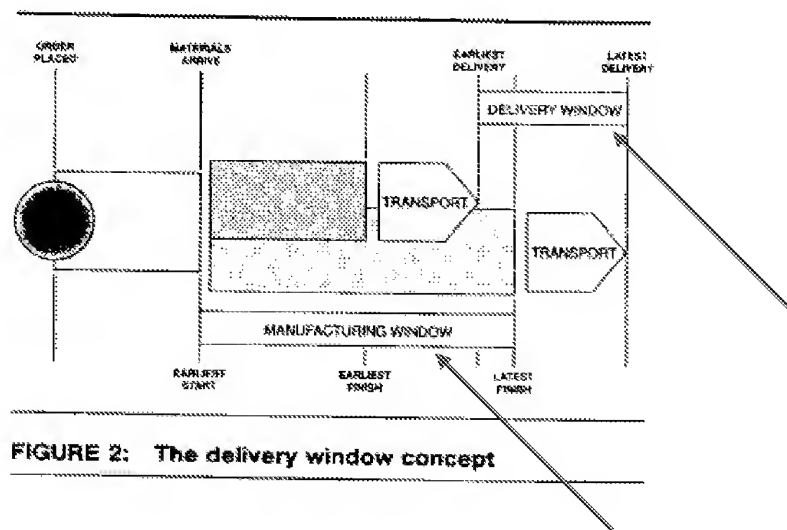
In response to Applicant's argument that the prior art of record fails to teach or suggest scheduling the manufacture of an item to complete during a shipping window nor determining the shipping window so as to allow the item to

Art Unit: 3624

be shipped via a lower cost method while arriving at a destination as if shipped via an expedited shipping method the examiner respectfully disagrees.

Corbett teaches a system and method for scheduling manufacture of an item (furniture) in a factory comprising planning and scheduling a time for manufacturing the item (manufacturing window) so as to have the manufacture of the item complete during a desired shipping window (delivery window; Column 1, Paragraph 2, Page 77; Column 2, Paragraph 2, Page 77; Number 3, Page 78; Figures 2, 4).

- "Delivery windows also provide a tight link between sales, purchasing and production." (Column 1, Paragraph 1, Page 75);
- "It tells production over what period manufacturing must take place." (Column 2, Paragraph 2, page 75); and
- "...delivery windows are an automatic prioritizing approach to product planning..." (Column 1, Paragraph 2, Page 77).



Art Unit: 3624

Chowdary et al. teach determining and selecting a lowest cost shipping method so as to have an item of manufacture arrive at a destination as if shipped via the expedited shipping method (e.g. substituting a lower cost shipping method (ground) for a higher cost shipping method (air) while still maintaining the shipping/delivery window; Column 1, Lines 33-43; Column 10, Lines 35-50; Column 11, Lines 25-42; Column 13, Number 5, Lines 44-50; Column 16, Numbers 5, 8).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-8, 18, 20-26, 36 and 33-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corbett, Delivery Windows – A New View On Improving Manufacturing Flexibility and On-Time Delivery Performance (1992) in view of Chowdhary et al., U.S. Patent no. 7,212,991.

Regarding Claims 1, 18 and 36 Corbett teach a system and method for scheduling manufacture (production, assembly, etc.) of an item comprising:

- obtaining a customer order comprising an item ordered and a desired shipping schedule corresponding to a shipping method (Column 1, Last Paragraph, Page 75; Column 2, Paragraph 1, Page 75);
- planning a time for manufacture (production, assembly, etc.) the item so that the item's manufacture completes during a desired shipping (delivery) window (Column 1, Page 75; Column 2, Paragraph 2, Page 75; Figures 2-4; Page 76; Column 1, Page 77);
- determining the desired shipping window so as to allow the item to be shipped/delivered on time (Column 1, Page 75; Column 2, Paragraph 2, Page 75; Figures 2-4; Page 76; Column 1, Page 77);

Art Unit: 3624

- scheduling manufacturing of the item based on the determining (Column 1, Page 75; Column 2, Paragraph 2, Page 75; Figures 2-4; Page 76; Column 1, Page 77).

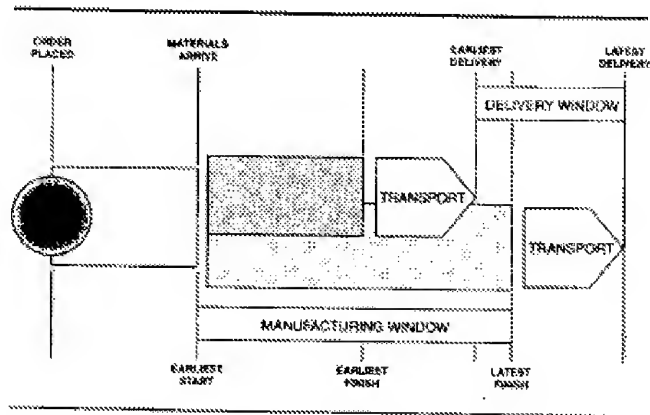


FIGURE 2: The delivery window concept

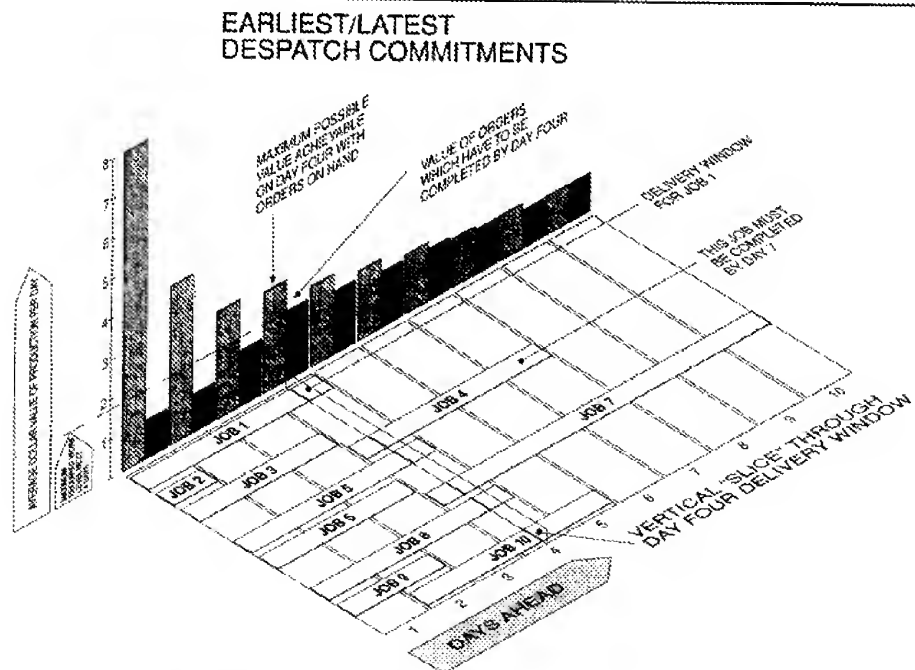


FIGURE 4: Earliest/latest despatch commitments

While expedited shipping (priority, overnight, rush, etc.) is an old and very common business practice wherein business' frequently use expedited shipping to ensure on-time delivery performance or customers desiring to receive their items as soon as possible Corbett does not expressly teach that the customer order desired shipping schedule corresponds to an expedited shipping method or that the shipping window is determined so as to allow the item to be shipped via a lower cost shipping method while arriving at a destination (any destination) as if shipped via the expedited shipping method as claimed.

Chowdhary et al. teach obtaining a customer order comprising an item ordered and a desired shipping schedule corresponding to an expedited shipping method (Column 4, Lines 1-6; Column 8, Lines 1-8) and determining a desired shipping window so as to allow the item to be shipped via a lower cost shipping method (e.g. ground) while arriving at a destination as if shipped via the expedited shipping method (Column 1, Lines 33-43; Column 10, Lines 35-50; Column 11, Lines 25-42; Column 13, Number 5, Lines 44-50; Column 16, Numbers 5, 8) in an analogous art of order management for the purpose of shipment optimizing (e.g. reducing the cost of shipping an item to the customer while meeting the customer's requirements including delivery date; Column 1, Lines 40-45; Column 13, Lines 25-42; Column 13, Lines 44-47) .

Art Unit: 3624

It would have been obvious to one skilled in the art at the time of the invention that the system and method for scheduling manufacturing of an item in a factory to meet a delivery window as taught by Corbett would have benefited from utilizing a lower cost shipping method to replace a requested expedited shipping method while still ensuring the item arrived at its destination on-time in view of the teachings of Chowdhary et al.; the resultant system/method enabling businesses to meet customer shipment/delivery windows at a reduced cost (Chowdhary et al.: Column 1, Lines 40-45; Column 13, Lines 25-42; Column 13, Lines 44-47).

Further since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claims 3, 20 and 38 Corbett teaches a manufacturing scheduling system and method wherein the item is in an information handling system (Column 2, Paragraph 2, Page 77; Figures 2-4).

Regarding Claims 4, 21 and 39 Corbett teaches a manufacturing scheduling system and method further comprising a destination (a destination is inherent in customer order requiring shipment/delivery) for the shipment of the item (Page 75; Column 2, Paragraph 2, Page 77).

Art Unit: 3624

Regarding Claims 5, 22 and 40 while determining the size, weight, etc. of shipments (orders) is old and very well known Corbett does not expressly teach determining a size of the order as claimed.

Chowdhary et al. teach determining a size (volume, weight, number of items for split orders) of the order (Column 10, Lines 25-28; Column 13, Lines 11-13) in an analogous art of order management for the purpose of determining which shipment method to utilize for the order as part of the 'optimal deal finder' wherein the 'size' of the order directly effects the cost of the shipping method.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for scheduling the manufacture of an item by Corbett would have benefited from selecting an 'optimal' shipping method based on a plurality of criteria including but not limited to the size of the order in view of the teachings of Chowdhary et al.; the resultant system/method enabling businesses to select the lowest cost shipping method (Chowdhary et al.: Column 1, Lines 40-45; Column 13, Lines 25-42; Column 13, Lines 44-47).

Further since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Art Unit: 3624

Regarding Claims 6, 23, 24 and 41-42 Corbett teaches a manufacturing scheduling system and method further comprising determining a time of day that the planning is occurring (Column 1, Paragraph 3, Page 75; Column 2, Paragraph 2, Page 77).

Regarding Claims 7-8, 25-26 and 43-44 while air and ground shipping methods are old and very well known as it the practice of selecting the lowest cost shipping method to meet customer desired dates Corbett is silent as to the specific type (class, category, mode, etc.) of shipment method used and does not expressly teach ground or air shipments as claimed.

Chowdary et al. teach a plurality of well known shipping methods including ground (lower cost) and air shipping (expedited; Column 8, Lines 5-8; Example 1, Column 13) in an analogous art of order management for the purpose of substituting a lower cost shipping method (ground) for a higher cost shipping method (air) while still maintaining the shipping/delivery window (Column 1, Lines 33-43; Column 10, Lines 35-50; Column 11, Lines 25-42; Column 13, Number 5, Lines 44-50; Column 16, Numbers 5, 8).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for scheduling manufacturing of an item in a factory to meet a delivery window as taught by Corbett would have benefited from utilizing a lower cost shipping method like ground to substitute for a

Art Unit: 3624

expedited shipping method while still ensuring the item arrived at its destination on-time in view of the teachings of Chowdhary et al.; the resultant system/method enabling businesses to meet customer shipment/delivery windows at a reduced cost (Chowdhary et al.: Column 1, Lines 40-45; Column 13, Lines 25-42; Column 13, Lines 44-47).

Further since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Flinn et al., U.S. Patent No. 5,467,285, teach a system and method for determining the most optimal (e.g. cost effective) transportation/shipping method for an item of manufacture that meets shipment constraints (e.g. due date).

- Martin et al., U.S. Patent No. 5,809,479, teach a system and method for scheduling an item to so as to have the item shipped by a target ship date.

- Breen et al., U.S. Patent No. 6,598,027, teach a system and method for selecting the lowest cost shipping method for an order/item of manufacture ("Once possible transportation modes are identified, the intermediary then selects the transportation mode having the lowest cost and that meets other

Art Unit: 3624

performance parameters (Block 262). The term "performance" may include time of delivery, availability of carrier, and so forth. For example, if rail shipment is less expensive than air shipment, but requires an additional week to complete shipment, air shipment may be the preferred transportation mode." (Column 12, Lines 51-58).

- Lyon et al., U.S. Patent Publication No. 2002/0103690, teach a system and method for scheduling/planning the manufacture of an item in a factory such that the item completes manufacture in order to meet a delivery time.

- Seimiya et al., U.S. Patent Publication No. 2003/0004595, teach a system and method for scheduling manufacture (assembly) of an item in a factory comprising planning a time for manufacture of the item so as to have the item complete during a desired shipping window ("delivery time").

- Kurihara et al., U.S. Patent Publication No. 2003/0171963, teach a system and method for scheduling manufacture of an item in a factory wherein the production time planned is so that the manufacture of the item is complete during a desired shipping window ("desired delivery times").

- Zeisset et al., U.S. Patent Publication No. 2004/0133438, teach a system and method for selecting the most cost effective shipping method (transportation mode) for item that meets a required shipping window/data (Paragraphs 7, 72).

- Carney et al., U.S. Patent Publication No. 2005/0065827, teach a system and method for scheduling manufacture of an item in a factory wherein

Art Unit: 3624

the production/manufacturing schedule is started "in accordance with the production delivery time" (Claims 1, 19).

- Malhorta et al., Management of vital customer priorities in job shop manufacturing environments (1994) teaches the well known scheduling of manufacture of an item to meeting shipping dates (window, time, etc.), expediting orders to meet shipment windows/due-dates as well as measuring/judging a factory's (job shop) ability to meet delivery windows (e.g. tightness of delivery windows).

- Ruiz-Torres et al., Simulation Based Approach To Study the Interaction of Scheduling and Routing on a Logistics Network (1997), teaches a system and method for scheduling manufacture (production, assembly, etc.) of an item in a factory wherein item production is scheduled based on shipping schedule and transportation alternatives represented as transportation and (production) scheduling rules. The article further teaches the importance of scheduling production in order to ensure shipping/delivery dates by prioritizing orders based on how close they are to their due dates as well as the use of expedited shipping to meet such dates.

- Software boosts manufacturing process (1998), teaches a system and method for scheduling manufacture of an item in a factory comprising receiving customer orders having a desired shipping schedule/date; planning a time of manufacturing for the item so as to have the manufacture of the item completed during a desired shipping window (departure times; "The key criteria for prioritizing order execution at Miller SQA are ship date and time.", Column 1, Last

Art Unit: 3624

Paragraph, Page 120; "...each order is further prioritized according to departure time. Departure times are critical to delivery success because Miller SQA works with 91 different freight carriers, each of which runs according to a agreed-upon schedule. For example, UPS picks up at 10 a.m. each day, so items that need to out with this carrier must be on the load dock by 9:30 a.m.", Column 2, Page 120).

- Yu-Jen, Chang et al., A bottleneck-based due-date assignment methodology (2000), teach the old and well known scheduling of production of an item a time from manufacturing so as to have the item complete during the desired shipping window (due-date).

- Foreman, Dell's i2 Factory Planner Architecture (2001), teaches Dell's utilization of i2's commercially available system and method for scheduling manufacture of an item in a factory comprising obtaining customer orders including a desired shipping schedule, planning manufacturing of an item to minimize shipping costs (e.g. geographic assignments of orders to factories), and scheduling production/manufacture of items based on promised or target ship dates (Bullet 1, Column 2, Page 3).

- Garcia et al., Coordinated Scheduling of Production And Delivery From Multiple Plants With Time Windows Using Genetic Algorithms (2002), teaches a system and method for scheduling manufacture of an item in a factory comprising receiving orders for an item said orders including a desired shipping schedule, planning and scheduling manufacturing of the item so as to complete manufacture during a desired shipping window.

Art Unit: 3624

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT L. JARRETT whose telephone number is (571)272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott L Jarrett/
Primary Examiner, Art Unit 3624